



Missouri Department of Natural Resources

Clean Water Commission Water Protection Program

Meeting Minutes

April 5, 2004

MISSOURI CLEAN WATER COMMISSION TELECONFERENCE MEETING

April 5, 2004

Jefferson State Office Building, 9th Floor Conference Room
205 Jefferson St., Jefferson City, Missouri

MINUTES

Present Via Telephone

Chairman Thomas A. Herrmann, Missouri Clean Water Commission
Davis D. Minton, Vice-Chairman, Missouri Clean Water Commission
Cosette D. Kelly, Commissioner, Missouri Clean Water Commission
Kristin M. Perry, Commissioner, Missouri Clean Water Commission

Dorris Bender, City of Independence, Independence, Missouri
Robert Brundage, Newman, Comley & Ruth, Jefferson City, Missouri
Dave Dillon, Department of Agriculture, Jefferson City, Missouri
Jack Dutra, Syngenta, Overland Park, Kansas
Bob Hentges, MO Public Utility Alliance, Jefferson City, Missouri
Leslie Holloway, MO Farm Bureau, Jefferson City, Missouri
Angel Kruzen, Sierra Club, Kansas City, Missouri
Mary Lappin, Kansas City Water Services, Kansas City, Missouri
John Lodderhose, MSD, St. Louis, Missouri
Ken Midkiff, Sierra Club, Columbia, Missouri
Kevin Perry, REGFORM, Jefferson City, Missouri
John Reece, Little Blue Valley Sewer District, Independence, Missouri
Terry Satterlee, Lathrop and Gage, Springfield, Missouri
Bob Veenstra, URS Corp./St. Louis RCGA, St. Louis, Missouri
Mary West, City of Moberly, Moberly, Missouri

Present

Rich Burdge, Department of Natural Resources, Jefferson City, Missouri
Aimee Davenport, Department of Natural Resources, Jefferson City, Missouri
John Ford, Department of Natural Resources, Jefferson City, Missouri
Jim Hull, Department of Natural Resources, Jefferson City, Missouri
Marlene Kirchner, Department of Natural Resources, Jefferson City, Missouri
Kevin Mohammadi, Department of Natural Resources, Jefferson City, Missouri
Amy Randles, Attorney General's Office, Jefferson City, Missouri
Phil Schroeder, Department of Natural Resources, Jefferson City, Missouri
Becky Shannon, Department of Natural Resources, Jefferson City, Missouri

Chairman Herrmann called the meeting to order at approximately 9:47 a.m.

303(d) Listing Methodology Rule

Mr. Jim Hull, Director of Staff, explained the Commission voted to reject the listing methodology document at the March 10, 2004 Clean Water Commission meeting. Staff was asked to renote and go through the stakeholder process and continue the

development of the document for the Commission's approval. On March 26, there was a conference call with the Commission to discuss rapidly getting together a group of stakeholders to discuss the methodology rule to see if they could come to a consensus on finalizing the proposed rule. In order for it to remain a valid rulemaking, the department must submit it to the Joint Committee on Administrative Rules by April 11. The stakeholder meeting was held on April 1. Significant progress was made in addressing concerns and suggesting changes to the proposed rule to address those concerns. Proceeding the stakeholder meeting, department staff made the suggested changes to the proposed final rule. The revised proposed rule was sent to the Commissioners along with a revised summary of comments. Stakeholders were sent the same documents. The department believes it has come to a consensus on the final rulemaking and wants the Commission to consider approving it with the changes that have been made.

Mr. Phil Schroeder, Chief of the Water Quality Monitoring and Assessment Section, described the changes that were made to the proposal that was presented to the Clean Water Commission on March 10.

The title of the rule was changed. They added the word General. It is now titled General Methodology for Development of Impaired Waterbody List.

Changed the definition of pollutant listed in (1) Definitions (B) Pollutant. It was changed to mirror the definition of chapter 2 in the regulations.

Removed a definition for the section 305(b) report. Throughout the rule, they removed references to the 305(b) report to make it clear that what they are developing is a rule that sets out the procedures for developing a 303(d) list.

Did a clarification on the Total Maximum Daily Load definition to be more grammatically correct.

Removed the reference to the 305(b) report at (2) Acceptable Water Quality Data for Use in Compiling the 303(d) List.

Removed the word "all" in (2) (A). The sentence now reads - The Missouri Department of Natural Resources (the department) will receive and review all data submitted, and will use scientifically defensible data.

Removed "...but will not be limited to,..." from (2) (A). The sentence now reads - Scientifically defensible data will include data meeting the following requirements:

Placed "accurately" back in (2) (C) and removed the later part of the sentence. It now reads - The department shall recognize four (4) levels of assurance for water quality data. Only data of Level 2 or higher shall be used to support additions, deletions, or changes to

the proposed 303(d) list, unless the problem can be accurately characterized by Level 1 data.

Redefined Level 1 data in (2) (C) 1. It now reads – All data not constituting Levels 2, 3 or 4.

Removed B. in (2) (C) 2 of the Level 2 definition. That falls under Level 1 type data.

Clarified what is now (2) (C) B. that fish tissue analyses has to have a least three samples.

Removed reference to the 305(b) Report in (3).

Removed “...follow its Listing Methodology Document...” from (3) (A). They removed any reference in the rule to the Listing Methodology Document.

Removed “...shall be considered when creating a Listing Methodology Document” and inserted “...when evaluating waters...” at the end of (3) (A).

Added a clarifier “...when a quantitative value can be applied to the pollutant...” to (3) (B) 1.

Removed the entire paragraph in (3) (B) 2. and added - The analysis of aquatic invertebrate data may be supported by habitat assessment protocols.

Removed (3) (B) 3 because that information would only apply under a 305(b) report assessment and not a 303(d) listing.

Removed original language under (4), items (A), (B), and (C), Creation of the proposed 303(d) List. Through stakeholder discussion, they developed language that would set out procedure by which the department would develop more detailed methodology. It was replaced with three new items. They are: (A) The department shall develop a detailed methodology for identifying waters that are impaired and shall submit the methodology to public review prior to the development of an impaired waters list. (B) The department shall propose for public comment a preliminary listing of impaired waters for no less than a 60 day public comment period. (C) The proposed 303(d) list shall be promulgated by rule.

Jim Hull stated there was one change that staff wanted the Commission to consider in addition to those that were just read.

Mr. Schroeder referenced the language under (3) (A) where they reference the guidelines of the USEPA. The discussion at the stakeholder meeting was if the Secretary of State’s Office would accept a proposed rule that allows any subsequent or superseding guidelines of EPA to automatically apply under this rule. Mr. Schroeder contacted the Secretary of State’s Office and they clarified that this type of language would be problematic. The

department asked the Commission to strike the language that reads "...and any subsequent superseding guidelines..." from this rule. This means that if EPA changes those guidelines, that the rule references, the department would have to go to a rulemaking process to reference the new guidelines.

Amy Randles, from the Attorney General's Office, stated if the intent is to have it so the department can change the methodology document fairly regularly to incorporate the updated changes, and then as you go forward with a specific proposed list, that's going to reflect the most recently approved Commission methodology document, and then that methodology document, whichever one is being relied on for a proposed 303(d) list, will be public noticed and available for comment along with it, the department may be able to get around the Secretary of State's concerns by saying "any subsequent superseding guidelines to the extent they are reflected in a Commission approved methodology document referred to in paragraph (4) (A)."

Mr. Schroeder reported the Secretary of State's Office was concerned about the department being able to make any rule subject to changing guidelines. They strongly recommended to the department if they want to follow suit with changing guidelines of another agency or EPA, they should follow suit with a subsequent change in the rule.

Ms. Randles suggested that if you don't want to have to go through a rulemaking of this particular rule each time, perhaps you don't reference the EPA guidance in this rule at all, instead reference it in the methodology document. Although it will not directly go through rulemaking, it will indirectly go through rulemaking every time you do a proposed 303(d) list because you will be referring to the specific version of the methodology document used for that proposed list. Each time you can update it to the correct version of the EPA Guidance. You won't be forcing yourself to revise this rule every time. Or, make a general reference to EPA Guidance without being specific about the document.

Mr. Schroeder stated staff would support that change. He rephrased the recommended changes to the proposed language. Under (3) (A), the staff recommended deletion of the sentence that reads "The guidelines of the USEPA (Guidelines for the Preparation of the Comprehensive State Water Quality Assessments (305(b) Reports) and Electronic Updates: Supplement, USEPA, Sept. 1997, and any subsequent, superseding guidelines) shall be considered when evaluating waters.

Mr. Hull stated they have gone through the proposed changes that are being recommended to the Commission based upon the comments received during the official comment period and discussion at the stakeholder meeting held on April 1. Mr. Hull asked the Commission to consider approving the final order of rulemaking with the changes proposed.

Kevin Perry, REGFORM, recommended in (2) (C) 2. B. to replace the word "analyses" with "samples."

Mr. Hull stated if this change is suitable to the Commission, he recommends making this change.

Chairman Herrmann entertained a motion to accept the rule as amended.

Commissioner Minton made a motion for the Commission to accept the amended 303(d) Listing Methodology Rule.

Ms. Randles asked Commissioner Minton if his motion included the two changes that were just discussed? Commissioner Minton replied yes.

Commissioner Perry seconded the motion. The motion passed unanimously.

Chairman Herrmann asked Mr. Hull is there is a date when the methodology document will be completed and when there will be a preliminary copy provided to the Commission for input.

Mr. Hull responded as soon as this rule is filed, staff will begin developing the detailed methodology for the next 303(d) list. In accordance with the methodology rule, the department will follow the procedures that are set forth to go about doing that.

Mr. Schroeder replied that staff will proceed quickly to finalize the detailed methodology, and revise the methodology document if needed so they can go ahead and begin the second step of compiling the next 303(d) list. This would be a preliminary list and would be discussed with the stakeholders before they would go to the Commission to propose a rule containing the 303(d) list. In order to get all the stakeholders together, they will probably try to meet at the end of April, at the earliest.

Mr. Hull stated the first stakeholder meeting will be held within the next 30-45 days.

Mr. Schroeder stated the department should be able to stay on track with the schedule that was worked out with EPA.

Chairman Herrmann asked about the date of the 303(d) list with EPA.

Mr. Hull replied July 2005 is the intended submittal date.

Chairman Herrmann asked when is the department proposing changes to Chapter 7? This is the Water Quality Standards they are working on now.

Mr. Hull replied July 2004 for proposing the rule changes and July 2005 for final promulgation.

Chairman Herrmann declared the meeting adjourned.

Respectfully submitted,

Jim Hull
Director of Staff